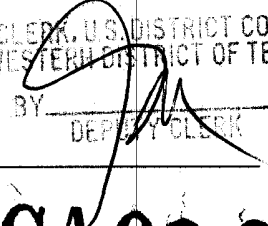


FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

2007 MAR 30 PM 2:11

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY  DEPUTY CLERK

**BRIDGET MORENO, ELIA QUIROGA AND  
DAVID WARD, INDIVIDUALLY AND ON BEHALF  
OF OTHERS SIMILARLY SITUATED,**

*Plaintiffs,*

v.

**EDCARE MANAGEMENT, INC.,**

*Defendant.*

CASE NO. \_\_\_\_\_

**SA07CA0284 OG**  
COLLECTIVE ACTION

JURY TRIAL DEMANDED

**ORIGINAL COLLECTIVE ACTION COMPLAINT**

**JURISDICTION**

1. This Court has original jurisdiction over this Fair Labor Standards Act (FLSA) case under 28 U.S.C. §1331 and under 29 U.S.C. § 216(b).

**VENUE**

2. Venue is proper in the Western District of Texas because Defendant EDCare Management, Inc. (EDCare) resides and is doing business in this District and some of the unlawful practices described herein occurred in this District.

### NATURE OF CASE

3. Plaintiffs Bridget Moreno, Elia Quiroga and David Ward (Plaintiffs) bring this case to recover the unpaid overtime wages owed to them and to other similarly situated, hourly paid mid-level providers (nurse practitioners and physician assistants).

4. EDCare is in the business of providing emergency room physicians and mid-level practitioners (nurse practitioners and physician assistants) to over dozens hospitals in many states.

5. Mid-level practitioners employed by EDCare are paid on an hourly basis and are, thus, non-exempt employees within the meaning of the FLSA. However, EDCare does not pay these mid-level providers any overtime pay for the hours worked in excess of forty (40) hours in a workweek. Instead, EDCare pays its mid-level providers at the same rate for all hours worked, including those in excess of forty in a week.

6. Plaintiffs bring this case as a nationwide "opt-in" collective action (hereinafter, "the Collective Action"). The Collective Action is brought on behalf of all persons in the United States who have been, are and/or will be employed by EDCare as hourly mid-level providers (nurse practitioners and physician assistants) (hereinafter, "the FLSA Employees"). The Collective Action seeks to (i) recover unpaid overtime compensation, (ii) obtain an equal amount in liquidated damages, and (iii) recover reasonable attorneys' fees and costs of the action.

### **PARTIES**

7. The FLSA Employees. The Collective Action is maintained as a collective action under 29 U.S.C. § 216(b) on behalf of all past, present and future employees of Defendants who have been, are and/or will be employed as mid-level providers (nurse practitioners and physician assistants) in the United States.

8. Plaintiffs Bridget Moreno, Elia Quiroga and David Ward are current employees of EDCare and are residents of the Western District of Texas. They are employed as mid-level providers. During their employment with EDCare, Plaintiffs regularly work in excess of forty (40) hours in a workweek but are not paid overtime wages as required under the FLSA.

9. EDCare is a Delaware corporation, which resides in and does business in the State of Texas and within this District. EDCare may be served at its corporate headquarters, 3107 Stirling Road, Suite 101, Ft. Lauderdale, FL 33312.

### **FACTUAL BACKGROUND**

10. Plaintiffs and the FLSA Employees are hourly mid-levels employed by EDCare who regularly work more than forty hours per week.

11. EDCare did not pay Plaintiffs and the FLSA Employees time-and-one-half for hours worked in excess of 40 in any workweek.

12. However, Mid-level providers who are paid on an hourly basis are non-exempt employees who are entitled to overtime. The Department of Labor has recognized this fact for over 30 years.

13. EDCare was under an obligation to determine whether this method of paying its mid-level providers complied with the FLSA. Therefore, EDCare knew or should have known that its policy or practice of paying its mid-level providers by the hour without paying them overtime violates the FLSA.

14. EDCare knew, or showed reckless disregard for whether, its failure to pay overtime to its hourly paid mid-levels was in violation of the FLSA.

#### **COLLECTIVE ACTION ALLEGATIONS**

15. Like Plaintiffs, the FLSA Employees have been injured by EDCare's policy or practice of paying its mid-level providers at the same hourly rate for all hours worked.

16. The FLSA Employees perform job duties which are similar to those performed by Plaintiffs.

17. EDCare pays Plaintiffs and the FLSA Employees according to the same hourly pay plan.

18. Plaintiffs and the FLSA Employees are similarly situated as required by 29 U.S.C. § 216(b). The FLSA Employees should receive a court-approved notice of this action and given the opportunity to participate in this action.

#### **CAUSE OF ACTION - FAILURE TO PAY OVERTIME**

19. Plaintiffs reallege the allegations set forth in the preceding paragraphs.

20. In failing to pay overtime compensation to hourly mid-level providers, EDCare has maintained a policy or practice which (1) violates the FLSA; and which (2) denies Plaintiffs and the FLSA Employees the wages they are owed under the law.

21. As such, Plaintiffs and the FLSA Employees are entitled to recover their unpaid overtime, liquidated damages in an amount equal to the unpaid overtime.

22. Plaintiffs are also entitled to reasonable attorneys' fees and costs of this action.

**JURY DEMAND**

23. Plaintiffs demand trial by jury on all issues triable of right by a jury.

**PRAYER**

Plaintiffs respectfully request judgment be entered against EDCare awarding Plaintiffs and those similarly situated:

- a. Their unpaid overtime wages plus an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b), plus such pre-judgment interest as may be allowed by law;
- b. Their attorneys' fees costs and disbursements of this suit; and
- h. Such other and further relief, including, without limitation, injunctive relief where appropriate, as the Court may deem just and proper or that is allowed under any Federal or state law violated by the conduct described herein.

Respectfully submitted,

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AND THE FLSA EMPLOYEES**

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**NOTICE OF CONSENT**

I consent to be a plaintiff in a collective action to recover unpaid overtime wages under the Fair Labor Standards Act.

Bridget Moreno  
CLIENT

DATE

3/16/07

